

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

DAVID PROFFITT and wife,	)	
TAMMY PROFFITT,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No.: 3:07-CV-183
	)	(VARLAN/SHIRLEY)
STATE FARM FIRE AND	)	
CASUALTY COMPANY,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

This is a diversity action arising out of a home fire which occurred on October 18, 2006. State Farm denied the claim on February 26, 2007 and Plaintiff filed this lawsuit on March 17, 2007 and it was removed to this Court from the Chancery Court for Claiborne County, Tennessee. Currently pending is the Defendant's Motion to Dismiss Bad Faith Claims [Doc, 6], in which defendant is seeking a 25% bad faith penalty under T.C.A. § 56-7-105(a). That statute provides that the penalty is not recoverable unless defendant refuses to pay the loss "within sixty (60) days after a demand has been made by the holder of the policy." *Id.* Each of the plaintiffs have filed affidavits stating that they made at least two claim demands under the policy to State Farm. Both plaintiffs contend that State Farm employees Joe Fain and Alan Issacs told them that State Farm would pay their claim demand. Mr. Proffitt states that Joe Fain told him that "he would take care of everything."

Under the circumstances, a question of material fact remains to be determined with respect of whether the plaintiffs complied with the notice of claim provision pursuant to T.C.A. § 56-7-105(a).

Defendant's Motion to Dismiss Bad Faith Claims [Doc. 6] is hereby **DENIED**.

IT IS SO ORDERED.

s/ Thomas A. Varlan

UNITED STATES DISTRICT JUDGE